IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Income Tax Appeal No. 39 /2004.
Commissioner of Income Tax-I vs. M/s Dinshaw Dairy Foods Ltd.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

CORAM : A.P. Lavande & R.V.More,JJ
DATE OF RESERVING : 3.8.2007
DATE OF PRONOUNCING: 21.11.2007

Heard Mr. Anand Parchure, learned counsel for the appellant and Mr. K.P. Dewani, learned counsel for the respondent.

2. This appeal under Section 260-A of the Income Tax Act, 1961 has been preferred by the revenue against the order dated 11/02/2004 passed by the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur (ITAT for short) dismissing the appeal filed by the revenue. By the said common order dated 11/02/2004 ITAT disposed of the appeals preferred by the revenue against the common order of CIT (A) Nagpur dated 29.1.2003 for the assessment years 1992-93 to 1994-95. In so far as the appeals for assessment years 1992-93

and 1994-95 are concerned the same were dismissed on the ground that the tax effect did not exceed Rs. 1 lac and, therefore, the same were filed by the revenue contrary to the directions issued by the Central Board of Direct Tax on 27.3.2002. Both the sides conceded that these appeals were not maintainable in view of the said circular issued by CBDT and in view of the judgment in the case of CIT vs. Camco Colour Company (254 ITR 565). In so far as the appeal for AY 1994-95 preferred by the revenue is concerned the ITAT relying upon the decision in assessee's own case for the assessment year 1997-98 dated 27.6.2003 wherein the Tribunal relying on the decision of the Bombay High Court in the case of CIT vs. Paul Brothers (216 ITR 548) held that the deduction under Section 80IA having been allowed to the assessee in the initial year i.e. 1992-93, the A.O. was not justified in denying such deduction in the subsequent years. Accordingly, the ITAT dismissed the appeal filed by the revenue.

3. Mr. Parchure, learned counsel appearing for the

revenue submitted that the assessee does not carry out activities in manufacturing process and as such CIT as well as ITAT have erred in allowing the claim of the assessee under Section 80IA of the Act. In support of the submission that the assessment carried out by the assessee in its dairy division are not manufacturing activities and as such the deduction under Section 80 IA of the Act could not have been allowed in favour of the assessee, Mr. Parchure relied upon several authorities. We do not deem it appropriate to refer to them in view of the order we propose to pass. Mr. Parchure further submitted that the revenue did not challenge the order passed by the assessing officer granting deduction under Section 80 IA of the Act for the initial assessment year 1992-93 since the tax effect was quite low.

4. Mr. K.P. Dewani submitted that the impugned order passed by the ITAT cannot be faulted inasmuch as the Tribunal has relied upon the decision of this Court in CIT vs. Paul Brothers (supra) in terms of which if certain deduction is permitted in a particular assessment year, the same could

not have been disallowed for subsequent assessment years. According to Mr. K.P. Dewani, no substantial question of law is involved in the present appeal.

5. Having considered the submissions made by the learned counsel for the parties and having perused the records we find no merit in the present appeal. The Tribunal was legally justified in placing reliance upon the judgment in CIT vs. Paul Brothers (216 ITR 548) and holding that once deduction under Section 80IA was allowed by the assessing officer in the initial assessment year i.e. 1992-93 there was no justification in denying such deduction in the subsequent years. We find no merit in the submission of Mr. Parchure that the revenue was justified in not challenging the order passed by the assessing officer allowing deduction under Section 80 IA for the year 1992-93 on the ground that the tax effect was quite low. The revenue ought to have been aware that in case deduction was allowed in a particular year the same could not have been denied for subsequent assessment years. The revenue ought to have, therefore,

challenged the order passed by the assessing officer for the assessment year 1992-93. The revenue having not done so we are of the considered opinion that no fault can be found with the order passed by the Tribunal which is impugned in the present appeal. Since we are dismissing the appeal placing reliance upon the Judgment in CIT vs. Paul Brothers (supra) we do not deem it necessary to go into the issue as to whether the activities carried out by the assessee in dairy division constitute manufacturing activities or not. We also do not deem it necessary to refer to several authorities relied upon by Mr. Parchure in support of the submission that the activities carried out by the assessee are not manufacturing activities.

6. For the reasons stated above, we find no merit in the present appeal. No substantial question of law is involved in the present appeal. Hence, the appeal is dismissed.

Judge **Judge**

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